

WARING FLOOR AMENDMENT  
SENATE AMENDMENTS TO H.B. 2389  
(Reference to House engrossed bill)

Page 3, between lines 8 and 9, insert:

"Sec. 3. Section 13-703, Arizona Revised Statutes, is amended to read:

13-703. Sentence of death or natural life imprisonment;  
aggravating and mitigating circumstances; definition

A. If the state has filed a notice of intent to seek the death penalty and the defendant is convicted of first degree murder as defined in section 13-1105, the defendant shall be sentenced to death or imprisonment in the custody of the state department of corrections for ~~life or~~ natural life as determined and in accordance with the procedures provided in section 13-703.01. A defendant who is sentenced to natural life is not eligible for commutation, parole, work furlough, work release or release from confinement on any basis. ~~If the defendant is sentenced to life, the defendant shall not be released on any basis until the completion of the service of twenty-five calendar years if the murdered person was fifteen or more years of age and thirty-five years if the murdered person was under fifteen years of age or was an unborn child.~~ In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.

B. At the aggravation phase of the sentencing proceeding that is held pursuant to section 13-703.01, the admissibility of information relevant to any of the aggravating circumstances set forth in subsection F of this section shall be governed by the rules of evidence applicable to criminal trials. The burden of establishing the existence of any of the aggravating circumstances set forth in subsection F of this section is on the prosecution. The prosecution must prove the existence of the aggravating circumstances beyond a reasonable doubt.

C. At the penalty phase of the sentencing proceeding that is held pursuant to section 13-703.01, the prosecution or the defendant may present any information that is relevant to any of the mitigating circumstances included in subsection G of this section, regardless of its admissibility

1 under the rules governing admission of evidence at criminal trials. The  
2 burden of establishing the existence of the mitigating circumstances included  
3 in subsection G of this section is on the defendant. The defendant must  
4 prove the existence of the mitigating circumstances by a preponderance of the  
5 evidence. If the trier of fact is a jury, the jurors do not have to agree  
6 unanimously that a mitigating circumstance has been proven to exist. Each  
7 juror may consider any mitigating circumstance found by that juror in  
8 determining the appropriate penalty.

9 D. Evidence that is admitted at the trial and that relates to any  
10 aggravating or mitigating circumstances shall be deemed admitted as evidence  
11 at a sentencing proceeding if the trier of fact considering that evidence is  
12 the same trier of fact that determined the defendant's guilt. The  
13 prosecution and the defendant shall be permitted to rebut any information  
14 received at the aggravation or penalty phase of the sentencing proceeding and  
15 shall be given fair opportunity to present argument as to whether the  
16 information is sufficient to establish the existence of any of the  
17 circumstances included in subsections F and G of this section.

18 E. In determining whether to impose a sentence of death or **NATURAL**  
19 life imprisonment, the trier of fact shall take into account the aggravating  
20 and mitigating circumstances that have been proven. The trier of fact shall  
21 impose a sentence of death if the trier of fact finds one or more of the  
22 aggravating circumstances enumerated in subsection F of this section and then  
23 determines that there are no mitigating circumstances sufficiently  
24 substantial to call for leniency.

25 F. The trier of fact shall consider the following aggravating  
26 circumstances in determining whether to impose a sentence of death:

27 1. The defendant has been convicted of another offense in the United  
28 States for which under Arizona law a sentence of life imprisonment or death  
29 was imposable.

30 2. The defendant has been or was previously convicted of a serious  
31 offense, whether preparatory or completed. Convictions for serious offenses  
32 committed on the same occasion as the homicide, or not committed on the same

1 occasion but consolidated for trial with the homicide, shall be treated as a  
2 serious offense under this paragraph.

3 3. In the commission of the offense the defendant knowingly created a  
4 grave risk of death to another person or persons in addition to the person  
5 murdered during the commission of the offense.

6 4. The defendant procured the commission of the offense by payment, or  
7 promise of payment, of anything of pecuniary value.

8 5. The defendant committed the offense as consideration for the  
9 receipt, or in expectation of the receipt, of anything of pecuniary value.

10 6. The defendant committed the offense in an especially heinous, cruel  
11 or depraved manner.

12 7. The defendant committed the offense while:

13 (a) In the custody of or on authorized or unauthorized release from  
14 the state department of corrections, a law enforcement agency or a county or  
15 city jail.

16 (b) On probation for a felony offense.

17 8. The defendant has been convicted of one or more other homicides, as  
18 defined in section 13-1101, that were committed during the commission of the  
19 offense.

20 9. The defendant was an adult at the time the offense was committed or  
21 was tried as an adult and the murdered person was under fifteen years of age,  
22 was an unborn child in the womb at any stage of its development or was  
23 seventy years of age or older.

24 10. The murdered person was an on duty peace officer who was killed in  
25 the course of performing the officer's official duties and the defendant  
26 knew, or should have known, that the murdered person was a peace officer.

27 11. The defendant committed the offense with the intent to promote,  
28 further or assist the objectives of a criminal street gang or criminal  
29 syndicate or to join a criminal street gang or criminal syndicate.

30 12. The defendant committed the offense to prevent a person's  
31 cooperation with an official law enforcement investigation, to prevent a  
32 person's testimony in a court proceeding, in retaliation for a person's

1 cooperation with an official law enforcement investigation or in retaliation  
2 for a person's testimony in a court proceeding.

3 13. The offense was committed in a cold, calculated manner without  
4 pretense of moral or legal justification.

5 14. The defendant used a remote stun gun or an authorized remote stun  
6 gun in the commission of the offense. For the purposes of this paragraph:

7 (a) "Authorized remote stun gun" means a remote stun gun that has all  
8 of the following:

9 (i) An electrical discharge that is less than one hundred thousand  
10 volts and less than nine joules of energy per pulse.

11 (ii) A serial or identification number on all projectiles that are  
12 discharged from the remote stun gun.

13 (iii) An identification and tracking system that, on deployment of  
14 remote electrodes, disperses coded material that is traceable to the  
15 purchaser through records that are kept by the manufacturer on all remote  
16 stun guns and all individual cartridges sold.

17 (iv) A training program that is offered by the manufacturer.

18 (b) "Remote stun gun" means an electronic device that emits an  
19 electrical charge and that is designed and primarily employed to incapacitate  
20 a person or animal either through contact with electrodes on the device  
21 itself or remotely through wired probes that are attached to the device or  
22 through a spark, plasma, ionization or other conductive means emitting from  
23 the device.

24 G. The trier of fact shall consider as mitigating circumstances any  
25 factors proffered by the defendant or the state that are relevant in  
26 determining whether to impose a sentence less than death, including any  
27 aspect of the defendant's character, propensities or record and any of the  
28 circumstances of the offense, including but not limited to the following:

29 1. The defendant's capacity to appreciate the wrongfulness of his  
30 conduct or to conform his conduct to the requirements of law was  
31 significantly impaired, but not so impaired as to constitute a defense to  
32 prosecution.

1           2. The defendant was under unusual and substantial duress, although  
2 not such as to constitute a defense to prosecution.

3           3. The defendant was legally accountable for the conduct of another  
4 under the provisions of section 13-303, but his participation was relatively  
5 minor, although not so minor as to constitute a defense to prosecution.

6           4. The defendant could not reasonably have foreseen that his conduct  
7 in the course of the commission of the offense for which the defendant was  
8 convicted would cause, or would create a grave risk of causing, death to  
9 another person.

10          5. The defendant's age.

11          H. For **THE** purposes of determining whether a conviction of any  
12 dangerous crime against children is a serious offense pursuant to this  
13 section, an unborn child shall be treated like a minor who is under twelve  
14 years of age.

15          I. For the purposes of this section, "serious offense" means any of  
16 the following offenses if committed in this state or any offense committed  
17 outside this state that if committed in this state would constitute one of  
18 the following offenses:

19           1. First degree murder.

20           2. Second degree murder.

21           3. Manslaughter.

22           4. Aggravated assault resulting in serious physical injury or  
23 committed by the use, threatened use or exhibition of a deadly weapon or  
24 dangerous instrument.

25           5. Sexual assault.

26           6. Any dangerous crime against children.

27           7. Arson of an occupied structure.

28           8. Robbery.

29           9. Burglary in the first degree.

30           10. Kidnapping.

31           11. Sexual conduct with a minor under fifteen years of age.

32           12. Burglary in the second degree.

1           13. Terrorism.

2           Sec. 4. Section 13-703.01, Arizona Revised Statutes, as amended by  
3 Laws 2005, chapter 325, section 3, is amended to read:

4           13-703.01. Sentences of death or natural life; imposition;  
5           sentencing proceedings; definitions

6           A. If the state has filed a notice of intent to seek the death penalty  
7 and the defendant is convicted of first degree murder, the trier of fact at  
8 the sentencing proceeding shall determine whether to impose a sentence of  
9 death in accordance with the procedures provided in this section. If the  
10 trier of fact determines that a sentence of death is not appropriate, or if  
11 the state has not filed a notice of intent to seek the death penalty, and the  
12 defendant is convicted of first degree murder, the court shall ~~determine~~  
13 ~~whether to~~ impose a sentence of ~~life or~~ natural life.

14          B. Before trial, the prosecution shall notice one or more of the  
15 aggravating circumstances under section 13-703, subsection F.

16          C. If the trier of fact finds the defendant guilty of first degree  
17 murder, the trier of fact shall then immediately determine whether one or  
18 more alleged aggravating circumstances have been proven. This proceeding is  
19 the aggravation phase of the sentencing proceeding.

20          D. If the trier of fact finds that one or more of the alleged  
21 aggravating circumstances have been proven, the trier of fact shall then  
22 immediately determine whether the death penalty should be imposed. This  
23 proceeding is the penalty phase of the sentencing proceeding.

24          E. At the aggravation phase, the trier of fact shall make a special  
25 finding on whether each alleged aggravating circumstance has been proven  
26 based on the evidence that was presented at the trial or at the aggravation  
27 phase. If the trier of fact is a jury, a unanimous verdict is required to  
28 find that the aggravating circumstance has been proven. If the trier of fact  
29 unanimously finds that an aggravating circumstance has not been proven, the  
30 defendant is entitled to a special finding that the aggravating circumstance  
31 has not been proven. If the trier of fact unanimously finds no aggravating

1 circumstances, the court shall then ~~determine whether to~~ impose a sentence of  
2 ~~life or~~ natural life on the defendant.

3 F. The penalty phase shall be held immediately after the trier of fact  
4 finds at the aggravation phase that one or more of the aggravating  
5 circumstances under section 13-703, subsection F have been proven. A finding  
6 by the trier of fact that any of the remaining aggravating circumstances  
7 alleged has not been proven or the inability of the trier of fact to agree on  
8 the issue of whether any of the remaining aggravating circumstances alleged  
9 has been proven shall not prevent the holding of the penalty phase.

10 G. At the penalty phase, the defendant and the state may present any  
11 evidence that is relevant to the determination of whether there is mitigation  
12 that is sufficiently substantial to call for leniency. In order for the  
13 trier of fact to make this determination, **REGARDLESS OF WHETHER THE DEFENDANT**  
14 **PRESENTS EVIDENCE OF MITIGATION**, the state may present any evidence that  
15 demonstrates that the defendant should not be shown leniency **INCLUDING ANY**  
16 **EVIDENCE REGARDING THE DEFENDANT'S CHARACTER, PROPENSITIES, CRIMINAL RECORD**  
17 **OR OTHER ACTS**.

18 H. The trier of fact shall determine unanimously whether death is the  
19 appropriate sentence. If the trier of fact is a jury and the jury  
20 unanimously determines that the death penalty is not appropriate, the court  
21 shall ~~determine whether to~~ impose a sentence of ~~life or~~ natural life.

22 I. If the trier of fact at any prior phase of the trial is the same  
23 trier of fact at the subsequent phase, any evidence that was presented at any  
24 prior phase of the trial shall be deemed admitted as evidence at any  
25 subsequent phase of the trial.

26 J. At the aggravation phase, if the trier of fact is a jury, the jury  
27 is unable to reach a verdict on any of the alleged aggravating circumstances  
28 and the jury has not found that at least one of the alleged aggravating  
29 circumstances has been proven, the court shall dismiss the jury and shall  
30 impanel a new jury. The new jury shall not retry the issue of the  
31 defendant's guilt or the issue regarding any of the aggravating circumstances  
32 that the first jury found not proved by unanimous verdict. If the new jury

1 is unable to reach a unanimous verdict, the court shall impose a sentence of  
2 ~~life or~~ natural life on the defendant.

3 K. At the penalty phase, if the trier of fact is a jury and the jury  
4 is unable to reach a verdict, the court shall dismiss the jury and shall  
5 impanel a new jury. The new jury shall not retry the issue of the  
6 defendant's guilt or the issue regarding any of the aggravating circumstances  
7 that the first jury found by unanimous verdict to be proved or not  
8 proved. If the new jury is unable to reach a unanimous verdict, the court  
9 shall impose a sentence of ~~life or~~ natural life on the defendant.

10 L. If the jury that rendered a verdict of guilty is not the jury first  
11 impaneled for the aggravation phase, the jury impaneled in the aggravation  
12 phase shall not retry the issue of the defendant's guilt. If the jury  
13 impaneled in the aggravation phase is unable to reach a verdict on any of the  
14 alleged aggravating circumstances and the jury has not found that at least  
15 one of the alleged aggravating circumstances has been proven, the court shall  
16 dismiss the jury and shall impanel a new jury. The new jury shall not retry  
17 the issue of the defendant's guilt or the issue regarding any of the  
18 aggravating circumstances that the first jury found not proved by unanimous  
19 verdict. If the new jury is unable to reach a unanimous verdict, the court  
20 shall impose a sentence of ~~life or~~ natural life on the defendant.

21 M. Alternate jurors who are impaneled for the trial in a case in which  
22 the offense is punishable by death shall not be excused from the case until  
23 the completion of the sentencing proceeding.

24 N. If the sentence of a person who was sentenced to death is  
25 overturned, the person shall be resentenced pursuant to this section by a  
26 jury that is specifically impaneled for this purpose as if the original  
27 sentencing had not occurred.

28 O. In any case that requires sentencing or resentencing in which the  
29 defendant has been convicted of an offense that is punishable by death and in  
30 which the trier of fact was a judge or a jury that has since been discharged,  
31 the defendant shall be sentenced or resentenced pursuant to this section by a  
32 jury that is specifically impaneled for this purpose.



1           P. The trier of fact shall make all factual determinations required by  
2 this section or the Constitution of the United States or this state to impose  
3 a death sentence. If the defendant bears the burden of proof, the issue  
4 shall be determined in the penalty phase. If the state bears the burden of  
5 proof, the issue shall be determined in the aggravation phase.

6           ~~Q. If the death penalty was not alleged or was alleged but not~~  
7 ~~imposed, the court shall determine whether to impose a sentence of life or~~  
8 ~~natural life. In determining whether to impose a sentence of life or natural~~  
9 ~~life, the court:~~

10           ~~1. May consider any evidence introduced before sentencing or at any~~  
11 ~~other sentencing proceeding.~~

12           ~~2. Shall consider the aggravating and mitigating circumstances listed~~  
13 ~~in section 13-702 and any statement made by a victim.~~

14           R. Q. Subject to the provisions of section 13-703, subsection B, a  
15 victim has the right to be present at the aggravation phase and to present  
16 any information that is relevant to the proceeding. A victim has the right  
17 to be present and to present information at the penalty phase. At the  
18 penalty phase, the victim may present information about the murdered person  
19 and the impact of the murder on the victim and other family members and may  
20 submit a victim impact statement in any format to the trier of fact.

21           S. R. For the purposes of this section:

22           1. "Trier of fact" means a jury unless the defendant and the state  
23 waive a jury, in which case the trier of fact shall be the court.

24           2. "Victim" means the murdered person's spouse, parent, child,  
25 grandparent or sibling, any other person related to the murdered person by  
26 consanguinity or affinity to the second degree or any other lawful  
27 representative of the murdered person, except if the spouse, parent, child,  
28 grandparent, sibling, other person related to the murdered person by  
29 consanguinity or affinity to the second degree or other lawful representative  
30 is in custody for an offense or is the accused.

31           Sec. 5. Section 13-703.01, Arizona Revised Statutes, as amended by  
32 Laws 2005, chapter 325, section 4, is amended to read:

1           13-703.01. Sentences of death or natural life; imposition;  
2                           sentencing proceedings; definitions

3           A. If the state has filed a notice of intent to seek the death penalty  
4 and the defendant is convicted of first degree murder, the trier of fact at  
5 the sentencing proceeding shall determine whether to impose a sentence of  
6 death in accordance with the procedures provided in this section. If the  
7 trier of fact determines that a sentence of death is not appropriate, or if  
8 the state has not filed a notice of intent to seek the death penalty, and the  
9 defendant is convicted of first degree murder, the court shall ~~determine~~  
10 ~~whether to~~ impose a sentence of ~~life or~~ natural life.

11          B. Before trial, the prosecution shall notice one or more of the  
12 aggravating circumstances under section 13-703, subsection F.

13          C. If the trier of fact finds the defendant guilty of first degree  
14 murder, the trier of fact shall then immediately determine whether one or  
15 more alleged aggravating circumstances have been proven. This proceeding is  
16 the aggravation phase of the sentencing proceeding.

17          D. If the trier of fact finds that one or more of the alleged  
18 aggravating circumstances have been proven, the trier of fact shall then  
19 immediately determine whether the death penalty should be imposed. This  
20 proceeding is the penalty phase of the sentencing proceeding.

21          E. At the aggravation phase, the trier of fact shall make a special  
22 finding on whether each alleged aggravating circumstance has been proven  
23 based on the evidence that was presented at the trial or at the aggravation  
24 phase. If the trier of fact is a jury, a unanimous verdict is required to  
25 find that the aggravating circumstance has been proven. If the trier of fact  
26 unanimously finds that an aggravating circumstance has not been proven, the  
27 defendant is entitled to a special finding that the aggravating circumstance  
28 has not been proven. If the trier of fact unanimously finds no aggravating  
29 circumstances, the court shall then ~~determine whether to~~ impose a sentence of  
30 ~~life or~~ natural life on the defendant.

31          F. The penalty phase shall be held immediately after the trier of fact  
32 finds at the aggravation phase that one or more of the aggravating

1 circumstances under section 13-703, subsection F have been proven. A finding  
2 by the trier of fact that any of the remaining aggravating circumstances  
3 alleged has not been proven or the inability of the trier of fact to agree on  
4 the issue of whether any of the remaining aggravating circumstances alleged  
5 has been proven shall not prevent the holding of the penalty phase.

6 G. At the penalty phase, the defendant and the state may present any  
7 evidence that is relevant to the determination of whether there is mitigation  
8 that is sufficiently substantial to call for leniency. In order for the  
9 trier of fact to make this determination, **REGARDLESS OF WHETHER THE DEFENDANT**  
10 **PRESENTS EVIDENCE OF MITIGATION**, the state may present any evidence that  
11 demonstrates that the defendant should not be shown leniency **INCLUDING ANY**  
12 **EVIDENCE REGARDING THE DEFENDANT'S CHARACTER, PROPENSITIES, CRIMINAL RECORD**  
13 **OR OTHER ACTS**.

14 H. The trier of fact shall determine unanimously whether death is the  
15 appropriate sentence. If the trier of fact is a jury and the jury  
16 unanimously determines that the death penalty is not appropriate, the court  
17 shall ~~determine whether to~~ impose a sentence of ~~life or~~ natural life.

18 I. If the trier of fact at any prior phase of the trial is the same  
19 trier of fact at the subsequent phase, any evidence that was presented at any  
20 prior phase of the trial shall be deemed admitted as evidence at any  
21 subsequent phase of the trial.

22 J. At the aggravation phase, if the trier of fact is a jury, the jury  
23 is unable to reach a verdict on any of the alleged aggravating circumstances  
24 and the jury has not found that at least one of the alleged aggravating  
25 circumstances has been proven, the court shall dismiss the jury and shall  
26 impanel a new jury. The new jury shall not retry the issue of the  
27 defendant's guilt or the issue regarding any of the aggravating circumstances  
28 that the first jury found not proved by unanimous verdict. If the new jury  
29 is unable to reach a unanimous verdict, the court shall impose a sentence of  
30 ~~life or~~ natural life on the defendant.

31 K. At the penalty phase, if the trier of fact is a jury and the jury  
32 is unable to reach a verdict, the court shall dismiss the jury and shall

1 impanel a new jury. The new jury shall not retry the issue of the  
2 defendant's guilt or the issue regarding any of the aggravating circumstances  
3 that the first jury found by unanimous verdict to be proved or not proved.  
4 If the new jury is unable to reach a unanimous verdict, the court shall  
5 impose a sentence of ~~life or~~ natural life on the defendant.

6 L. If the jury that rendered a verdict of guilty is not the jury first  
7 impaneled for the aggravation phase, the jury impaneled in the aggravation  
8 phase shall not retry the issue of the defendant's guilt. If the jury  
9 impaneled in the aggravation phase is unable to reach a verdict on any of the  
10 alleged aggravating circumstances and the jury has not found that at least  
11 one of the alleged aggravating circumstances has been proven, the court shall  
12 dismiss the jury and shall impanel a new jury. The new jury shall not retry  
13 the issue of the defendant's guilt or the issue regarding any of the  
14 aggravating circumstances that the first jury found not proved by unanimous  
15 verdict. If the new jury is unable to reach a unanimous verdict, the court  
16 shall impose a sentence of ~~life or~~ natural life on the defendant.

17 M. Alternate jurors who are impaneled for the trial in a case in which  
18 the offense is punishable by death shall not be excused from the case until  
19 the completion of the sentencing proceeding.

20 N. If the sentence of a person who was sentenced to death is  
21 overturned, the person shall be resentenced pursuant to this section by a  
22 jury that is specifically impaneled for this purpose as if the original  
23 sentencing had not occurred.

24 O. In any case that requires sentencing or resentencing in which the  
25 defendant has been convicted of an offense that is punishable by death and in  
26 which the trier of fact was a judge or a jury that has since been discharged,  
27 the defendant shall be sentenced or resentenced pursuant to this section by a  
28 jury that is specifically impaneled for this purpose.

29 P. The trier of fact shall make all factual determinations required by  
30 this section or the Constitution of the United States or this state to impose  
31 a death sentence. If the defendant bears the burden of proof, the issue

1 shall be determined in the penalty phase. If the state bears the burden of  
2 proof, the issue shall be determined in the aggravation phase.

3 ~~Q. If the death penalty was not alleged or was alleged but not~~  
4 ~~imposed, the court shall determine whether to impose a sentence of life or~~  
5 ~~natural life. In determining whether to impose a sentence of life or natural~~  
6 ~~life, the court:~~

7 ~~1. May consider any evidence introduced before sentencing or at any~~  
8 ~~other sentencing proceeding.~~

9 ~~2. Shall consider the aggravating and mitigating circumstances listed~~  
10 ~~in section 13-702 and any statement made by a victim.~~

11 ~~R.~~ Q. Subject to the provisions of section 13-703, subsection B, a  
12 victim has the right to be present at the aggravation phase and to present  
13 any information that is relevant to the proceeding. A victim has the right  
14 to be present at the penalty phase. At the penalty phase, the victim has the  
15 right to be heard pursuant to section 13-4426.

16 ~~S.~~ R. For the purposes of this section:

17 1. "Trier of fact" means a jury unless the defendant and the state  
18 waive a jury, in which case the trier of fact shall be the court.

19 2. "Victim" means the murdered person's spouse, parent, child,  
20 grandparent or sibling, any other person related to the murdered person by  
21 consanguinity or affinity to the second degree or any other lawful  
22 representative of the murdered person, except if the spouse, parent, child,  
23 grandparent, sibling, other person related to the murdered person by  
24 consanguinity or affinity to the second degree or other lawful representative  
25 is in custody for an offense or is the accused.

26 Sec. 6. Section 13-703.04, Arizona Revised Statutes, is amended to  
27 read:

28 13-703.04. Death sentences; supreme court review

29 A. The supreme court shall review all death sentences. On review, the  
30 supreme court shall independently review the trial court's findings of  
31 aggravation and mitigation and the propriety of the death sentence.

1           B. If the supreme court determines that an error was made regarding a  
2 finding of aggravation or mitigation, the supreme court shall independently  
3 determine if the mitigation the supreme court finds is sufficiently  
4 substantial to warrant leniency in light of the existing aggravation. If the  
5 supreme court finds that the mitigation is not sufficiently substantial to  
6 warrant leniency, the supreme court shall affirm the death sentence. If the  
7 supreme court finds that the mitigation is sufficiently substantial to  
8 warrant leniency, the supreme court shall impose a NATURAL life sentence  
9 pursuant to section 13-703, subsection A.

10           C. The independent review required by subsection A OF THIS SECTION  
11 does not preclude the supreme court from remanding a case for further action  
12 if the trial court erroneously excluded evidence or if the appellate record  
13 does not adequately reflect the evidence presented.

14           Sec. 7. Section 13-713, Arizona Revised Statutes, is amended to read:

15           13-713. Third or subsequent offenses by violent or aggravated  
16                           offenders: sentencing: natural life imprisonment:  
17                           definition

18           A. Unless a longer term of imprisonment or death is the prescribed  
19 penalty and notwithstanding any provision that establishes a shorter term of  
20 imprisonment, a person who has been convicted of committing or attempting or  
21 conspiring to commit any violent or aggravated felony and who has previously  
22 been convicted on separate occasions of two or more violent or aggravated  
23 felonies not committed on the same occasion shall be sentenced to  
24 imprisonment for NATURAL life and is not eligible for suspension of sentence,  
25 probation, pardon or release on any basis ~~except that the person may be~~  
26 ~~eligible for commutation after the person has served at least thirty-five~~  
27 ~~years.~~

28           B. In order for the penalty under subsection A of this section to  
29 apply, both of the following must occur:

30           1. The aggravated or violent felonies that comprise the prior  
31 convictions shall have been entered within fifteen years of the conviction

1 for the third offense, not including time spent in custody or on probation  
2 for an offense or while the person is an absconder.

3 2. The sentence for the first aggravated or violent felony conviction  
4 shall have been imposed before the conduct occurred that gave rise to the  
5 second conviction, and the sentence for the second aggravated or violent  
6 felony conviction shall have been imposed before the conduct occurred that  
7 gave rise to the third conviction.

8 C. Chapter 3 of this title applies to all offenses under this section.

9 D. For the purposes of this section, if a person has been convicted of  
10 an offense committed in another jurisdiction that if committed in this state  
11 would be a violation or attempted violation of any of the offenses listed in  
12 this section and that has the same elements of an offense listed in this  
13 section, the offense committed in another jurisdiction is considered an  
14 offense committed in this state.

15 E. For the purposes of this section, "violent or aggravated felony"  
16 means any of the following offenses:

17 1. First degree murder.

18 2. Second degree murder.

19 3. Aggravated assault resulting in serious physical injury or  
20 involving the discharge, use or threatening exhibition of a deadly weapon or  
21 dangerous instrument.

22 4. Dangerous or deadly assault by prisoner.

23 5. Committing assault with intent to incite to riot or participate in  
24 riot.

25 6. Drive by shooting.

26 7. Discharging a firearm at a residential structure if the structure  
27 is occupied.

28 8. Kidnapping.

29 9. Sexual conduct with a minor that is a class 2 felony.

30 10. Sexual assault.

31 11. Molestation of a child.

32 12. Continuous sexual abuse of a child.

1           13. Violent sexual assault.

2           14. Burglary in the first degree committed in a residential structure  
3 if the structure is occupied.

4           15. Arson of an occupied structure.

5           16. Arson of an occupied jail or prison facility.

6           17. Armed robbery.

7           18. Participating in or assisting a criminal syndicate or leading or  
8 participating in a criminal street gang.

9           19. Terrorism.

10          20. Taking a child for the purpose of prostitution.

11          21. Child prostitution.

12          22. Commercial sexual exploitation of a minor.

13          23. Sexual exploitation of a minor.

14          24. Unlawful introduction of disease or parasite as prescribed by  
15 section 13-2912, subsection A, paragraph 2 or 3.

16          Sec. 8. Section 13-1105, Arizona Revised Statutes, is amended to read:

17          13-1105. First degree murder; classification

18          A. A person commits first degree murder if:

19           1. Intending or knowing that the person's conduct will cause death,  
20 the person causes the death of another person, including an unborn child,  
21 with premeditation or, as a result of causing the death of another person  
22 with premeditation, causes the death of an unborn child.

23           2. Acting either alone or with one or more other persons the person  
24 commits or attempts to commit sexual conduct with a minor under section  
25 13-1405, sexual assault under section 13-1406, molestation of a child under  
26 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under  
27 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under  
28 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under  
29 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory  
30 threshold amount for each offense or combination of offenses, involving or  
31 using minors in drug offenses under section 13-3409, kidnapping under section  
32 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under



1 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or  
2 13-1904, escape under section 13-2503 or 13-2504, child abuse under section  
3 13-3623, subsection A, paragraph 1, ~~or~~ or unlawful flight from a pursuing law  
4 enforcement vehicle under section 28-622.01 and, in the course of and in  
5 furtherance of the offense or immediate flight from the offense, the person  
6 or another person causes the death of any person.

7 3. Intending or knowing that the person's conduct will cause death to  
8 a law enforcement officer, the person causes the death of a law enforcement  
9 officer who is in the line of duty.

10 B. Homicide, as prescribed in subsection A, paragraph 2 of this  
11 section, requires no specific mental state other than what is required for  
12 the commission of any of the enumerated felonies.

13 C. An offense under subsection A, paragraph 1 of this section applies  
14 to an unborn child in the womb at any stage of its development. A person  
15 shall not be prosecuted under subsection A, paragraph 1 of this section if  
16 any of the following applies:

17 1. The person was performing an abortion for which the consent of the  
18 pregnant woman, or a person authorized by law to act on the pregnant woman's  
19 behalf, has been obtained or for which the consent was implied or authorized  
20 by law.

21 2. The person was performing medical treatment on the pregnant woman  
22 or the pregnant woman's unborn child.

23 3. The person was the unborn child's mother.

24 D. First degree murder is a class 1 felony and is punishable by death  
25 or NATURAL life imprisonment as provided by sections 13-703 and 13-703.01.

26 Sec. 9. Section 13-1405, Arizona Revised Statutes, is amended to read:

27 13-1405. Sexual conduct with a minor: classification

28 A. A person commits sexual conduct with a minor by intentionally or  
29 knowingly engaging in sexual intercourse or oral sexual contact with any  
30 person who is under eighteen years of age.

31 B. IF A PERSON IS CONVICTED OF SEXUAL CONDUCT WITH A MINOR AND THE  
32 COURT SENTENCES THE PERSON TO A TERM OF PROBATION, THE COURT SHALL ORDER THAT

AS AN INITIAL TERM OF PROBATION THE PERSON BE IMPRISONED IN THE COUNTY JAIL FOR ONE YEAR. THIS JAIL TERM OF INCARCERATION SHALL NOT BE DELETED, DEFERRED OR OTHERWISE SUSPENDED AND SHALL COMMENCE ON THE DATE OF SENTENCING. THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO IS SENTENCED TO SERVE A PERIOD OF INCARCERATION IN THE STATE DEPARTMENT OF CORRECTIONS.

~~B.~~ C. Sexual conduct with a minor who is under fifteen years of age is a class 2 felony and is punishable pursuant to section 13-604.01. Sexual conduct with a minor who is at least fifteen years of age is a class ~~6~~ 4 felony. Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is the minor's parent, stepparent, adoptive parent, legal guardian or foster parent and the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed has been served or commuted."

Renumber to conform

Page 6, between lines 31 and 32, insert:

"Sec. 12. Section 13-3112, Arizona Revised Statutes, is amended to read:

13-3112. Concealed weapons: qualification: application: permit to carry: certificate of firearms proficiency: training program: program instructors: report: applicability: violation: classification

A. The department of public safety shall issue a permit to carry a concealed weapon to a person who is qualified under this section. The person shall carry the permit at all times when the person is in actual possession of the concealed weapon and shall present the permit for inspection to any law enforcement officer on request.

B. A person who fails to carry the permit at all times that the person is in actual possession of a concealed weapon may have the permit suspended. The department of public safety shall be notified of all violations of this section and shall immediately suspend the permit. The permittee shall present the permit to the law enforcement agency or the court. On

1 notification of the presentation of the permit, the department shall restore  
2 the permit.

3 C. The permit of a person who is arrested or indicted for an offense  
4 that would make the person unqualified under section 13-3101, subsection A,  
5 paragraph 6 or this section shall be immediately suspended and seized. The  
6 permit of a person who becomes unqualified on conviction of that offense  
7 shall be revoked. The permit shall be restored on presentation of  
8 documentation from the court if the permittee is found not guilty or the  
9 charges are dismissed. The permit shall be restored on presentation of  
10 documentation from the county attorney that the charges against the permittee  
11 were dropped or dismissed.

12 D. A permittee who carries a concealed weapon and who fails to present  
13 a permit for inspection on the request of a law enforcement officer is guilty  
14 of a petty offense. A permittee shall not be convicted of a violation of  
15 this subsection if the permittee produces to the court a legible permit that  
16 is issued to the permittee and that was valid at the time the violation of  
17 this subsection occurred.

18 E. The department of public safety shall issue a permit to an  
19 applicant who meets all of the following conditions:

- 20 1. Is a resident of this state or a United States citizen.
- 21 2. Is twenty-one years of age or older.
- 22 3. Is not under indictment for and has not been convicted in any  
23 jurisdiction of a felony **UNLESS THAT CONVICTION HAS BEEN EXPUNGED, SET ASIDE**  
24 **OR VACATED OR THE APPLICANT'S RIGHTS HAVE BEEN RESTORED AND THE APPLICANT IS**  
25 **CURRENTLY NOT A PROHIBITED POSSESSOR UNDER STATE OR FEDERAL LAW.**
- 26 4. Does not suffer from mental illness and has not been adjudicated  
27 mentally incompetent or committed to a mental institution.
- 28 5. Is not unlawfully present in the United States.
- 29 6. Satisfactorily completes a firearms safety training program  
30 approved by the department of public safety pursuant to subsection 0 of this  
31 section. This paragraph does not apply to:

1           (a) A person who is an active duty Arizona peace officer standards and  
2 training board certified or federally credentialed peace officer or who is  
3 honorably retired as a federal, state or local peace officer with a minimum  
4 of ten years of service.

5           (b) A person who is an active duty county detention officer and who  
6 has been weapons certified by the officer's employing agency.

7           (c) A person who is issued a certificate of firearms proficiency  
8 pursuant to subsection X of this section.

9           F. The application shall be completed on a form prescribed by the  
10 department of public safety. The form shall not require the applicant to  
11 disclose the type of firearm for which a permit is sought. The applicant  
12 shall attest under penalty of perjury that all of the statements made by the  
13 applicant are true. The applicant shall submit the application to the  
14 department with a certificate of completion from an approved firearms safety  
15 training program, two sets of fingerprints and a reasonable fee determined by  
16 the director of the department.

17           G. On receipt of a concealed weapon permit application, the department  
18 of public safety shall conduct a check of the applicant's criminal history  
19 record pursuant to section 41-1750. The department of public safety may  
20 exchange fingerprint card information with the federal bureau of  
21 investigation for federal criminal history record checks.

22           H. The department of public safety shall complete all of the required  
23 qualification checks within sixty days after receipt of the application and  
24 shall issue a permit within fifteen working days after completing the  
25 qualification checks if the applicant meets all of the conditions specified  
26 in subsection E of this section. If a permit is denied, the department of  
27 public safety shall notify the applicant in writing within fifteen working  
28 days after the completion of all of the required qualification checks and  
29 shall state the reasons why the application was denied. On receipt of the  
30 notification of the denial, the applicant has twenty days to submit any  
31 additional documentation to the department. On receipt of the additional  
32 documentation, the department shall reconsider its decision and inform the

1 applicant within twenty days of the result of the reconsideration. If  
2 denied, the applicant shall be informed that the applicant may request a  
3 hearing pursuant to title 41, chapter 6, article 10.

4 I. On issuance, a permit is valid for five years, except a permit that  
5 is held by a member of the United States armed forces, including a member of  
6 the Arizona national guard or a member of the reserves of any military  
7 establishment of the United States, who is on federal active duty and who is  
8 deployed overseas shall be extended until ninety days after the end of the  
9 member's overseas deployment.

10 J. The department of public safety shall maintain a computerized  
11 permit record system that is accessible to criminal justice agencies for the  
12 purpose of confirming the permit status of any person who claims to hold a  
13 valid permit issued by this state. This information and any other records  
14 that are maintained regarding applicants, permit holders or instructors shall  
15 not be available to any other person or entity except on an order from a  
16 state or federal court.

17 K. Notwithstanding subsection J of this section, it is a defense to  
18 any charge for carrying a deadly weapon without a permit by a member of the  
19 United States armed forces, including a member of the Arizona national guard  
20 or a member of the reserves of any military establishment of the United  
21 States, if the member was on federal active duty at the time the permit  
22 expired and the member presents documentation indicating release from active  
23 duty or reassignment from overseas deployment within the preceding ninety  
24 days.

25 L. A permit issued pursuant to this section is renewable every five  
26 years. Before a permit may be renewed, a criminal history records check  
27 shall be conducted pursuant to section 41-1750 within sixty days after  
28 receipt of the application for renewal. For the purposes of permit renewal,  
29 the permit holder is not required to submit additional fingerprints.

30 M. Applications for renewal shall be accompanied by a fee determined  
31 by the director of the department of public safety.

1           N. The department of public safety shall suspend or revoke a permit  
2 issued under this section if the permit holder becomes ineligible pursuant to  
3 subsection E of this section. The department of public safety shall notify  
4 the permit holder in writing within fifteen working days after the revocation  
5 or suspension and shall state the reasons for the revocation or suspension.

6           O. An organization shall apply to the department of public safety for  
7 approval of its firearms safety training program. The department shall  
8 approve a program that meets the following requirements:

- 9           1. Is at least eight hours in length.  
10          2. Is conducted on a pass or fail basis.  
11          3. Addresses all of the following topics in a format approved by the  
12 director of the department:  
13           (a) Legal issues relating to the use of deadly force.  
14           (b) Weapon care and maintenance.  
15           (c) Mental conditioning for the use of deadly force.  
16           (d) Safe handling and storage of weapons.  
17           (e) Marksmanship.  
18           (f) Judgmental shooting.  
19          4. Is conducted by instructors who submit to a background  
20 investigation, including a check for warrants and a criminal history records  
21 check.

22          P. If approved pursuant to subsection O of this section, the  
23 organization shall submit to the department of public safety two sets of  
24 fingerprints from each instructor and a fee to be determined by the director  
25 of the department of public safety. On receipt of the fingerprints and fee,  
26 the department of public safety shall conduct a check of each instructor's  
27 criminal history record pursuant to section 41-1750. The department of  
28 public safety may exchange this fingerprint card information with the federal  
29 bureau of investigation for federal criminal history record checks.

30          Q. The proprietary interest of all approved instructors and programs  
31 shall be safeguarded, and the contents of any training program shall not be

1 disclosed to any person or entity other than a bona fide criminal justice  
2 agency, except ~~upon~~ ON an order from a state or federal court.

3 R. If the department of public safety rejects a program, the rejected  
4 organization may request a hearing pursuant to title 41, chapter 6,  
5 article 10.

6 S. The department of public safety shall maintain information  
7 comparing the number of permits requested, the number of permits issued and  
8 the number of permits denied. The department shall annually report this  
9 information to the governor and the legislature.

10 T. The director of the department of public safety shall adopt rules  
11 for the purpose of implementing and administering the concealed weapons  
12 permit program including fees relating to permits and certificates that are  
13 issued pursuant to this section.

14 U. This state and any political subdivision of this state shall  
15 recognize a concealed weapon, firearm or handgun permit or license that is  
16 issued by another state or a political subdivision of another state if both:

17 1. The permit or license is recognized as valid in the issuing state.

18 2. The permit or license holder is all of the following:

19 (a) Not a resident of this state.

20 (b) Legally present in this state.

21 (c) Not legally prohibited from possessing a firearm in this state.

22 V. For the purpose of establishing mutual permit or license  
23 recognition with other states, the department of public safety shall enter  
24 into a written agreement if another state requires a written agreement.

25 W. Notwithstanding the provisions of this section, a person with a  
26 concealed weapons permit from another state may not carry a concealed weapon  
27 in this state if the person is under twenty-one years of age or is under  
28 indictment for, or has been convicted of, a felony offense in any  
29 jurisdiction, ~~even-if~~ UNLESS the person's rights have been restored and the  
30 conviction is expunged, set aside or vacated AND THE PERSON IS CURRENTLY NOT  
31 A PROHIBITED POSSESSOR UNDER STATE OR FEDERAL LAW.

1           X. The department of public safety may issue certificates of firearms  
2 proficiency according to the Arizona peace officer standards and training  
3 board firearms qualification for the purposes of implementing the law  
4 enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18  
5 United States Code sections 926B and 926C). A law enforcement agency shall  
6 issue to a law enforcement officer who has honorably retired a photographic  
7 identification that states that the officer has honorably retired from the  
8 agency. The chief law enforcement officer shall determine whether an officer  
9 has honorably retired and the determination is not subject to review. A law  
10 enforcement agency has no obligation to revoke, alter or modify the honorable  
11 discharge photographic identification based on conduct that the agency  
12 becomes aware of or that occurs after the officer has separated from the  
13 agency."

14       Renumber to conform

15       Page 9, after line 9, insert:

16           "Sec. 18. Conditional enactment

17           Section 13-703.01, Arizona Revised Statutes, as amended by Laws 2005,  
18 chapter 325, section 4 and this act, does not take effect unless the  
19 condition prescribed by Laws 2003, chapter 255, section 8, relating to victim  
20 sentencing recommendations, is met."

21       Amend title to conform

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